



General Assembly

January Session, 2005

***Raised Bill No. 1361***

LCO No. 5128

\*05128\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***AN ACT CONCERNING SOUTHERN NEW ENGLAND MILK PRICING.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22-131 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2005*):

3 (a) In accordance with section 4-9a, the Governor, with the advice  
4 and consent of either house of the General Assembly, shall appoint  
5 [six] seven electors of the state, two of whom are actively engaged in  
6 the sale and distribution of milk, [two] three of whom have no active  
7 or financial interest in the production or sale of milk, and two of whom  
8 are actively engaged in the production of milk, which six electors, with  
9 the Commissioner of Public Health, or his designee, and the  
10 Commissioner of Agriculture, shall constitute the Milk Regulation  
11 Board. The Governor, for cause, after a public hearing, may remove  
12 any appointed member of the board.

13 (b) The Milk Regulation Board shall keep a record of all its  
14 proceedings. The Commissioner of Agriculture shall be the  
15 chairperson of the board, shall enforce the regulations established by  
16 the board and shall further administer any other duties prescribed by

17 the board. The office of the Commissioner of Agriculture shall be the  
18 office of the board. Each of the six members of the Milk Regulation  
19 Board appointed under the provisions of this section shall receive  
20 seventy-five dollars for each day the member attends a meeting of the  
21 board. The total payments to each member shall not exceed seven  
22 hundred fifty dollars each year, such payments to be made from the  
23 appropriations made for the Commissioner of Agriculture.

24 (c) There is established a Wholesale Milk Price Regulatory  
25 subcommittee of the board which shall consist of the three members of  
26 the board who have no active or financial interest in the production or  
27 sale of milk. The subcommittee shall have the exclusive authority to  
28 exercise on behalf of the board the powers established by sections 2 to  
29 7, inclusive, of this act. The subcommittee shall elect a chairperson  
30 from among its members.

31 Sec. 2. (NEW) (*Effective July 1, 2005*) (a) To assure an adequate and  
32 regular supply of fresh, locally produced beverage milk and milk  
33 products for the consumers of the state, and to protect the public  
34 health therein, the Milk Regulation Board may adopt, regulations in  
35 accordance with the provisions of chapter 54 of the general statutes, to  
36 establish minimum prices to be paid by milk dealers for milk received,  
37 purchased, stored, manufactured, processed, distributed or otherwise  
38 handled for ultimate consumption as fluid or beverage milk within the  
39 state.

40 (b) The determination by the board that minimum pricing is  
41 necessary under this section shall depend on an initial, express finding  
42 that the producer price otherwise received by dairy farmers who  
43 provide the wholesale supply for the state's consumption of fresh,  
44 locally produced beverage milk is not sufficient to ensure the adequacy  
45 and regularity of such supply.

46 (c) In further defining and establishing minimum pricing necessary  
47 and sufficient to ensure the adequacy and regularity of the milk  
48 supply, and to ensure that such pricing is reasonable and just, the

49 board shall, at a minimum, further consider and make findings with  
50 regard to: (1) The prevailing price for milk outside the regulated area,  
51 including regulated pricing provisions established by other states in  
52 the region, (2) producer costs of production, including the reasonable  
53 value of a producer's own labor, management and capital expenses, (3)  
54 hauling, handling, processing, storage, distribution and other cost  
55 factors involved in the processing, marketing and retailing of milk, (4)  
56 the balance between the state's supply and consumption of milk, (5)  
57 the purchasing power of consumers as evidenced by available indices  
58 of income and other relevant statistics, and (6) the price necessary to  
59 yield a reasonable return to the producer, distributor and retailer.

60 (d) The amount of the minimum price established by the board shall  
61 not exceed one dollar seventy-five cents per gallon. Beginning in 2005,  
62 and using that year as a base, such maximum price of one dollar  
63 seventy-five cents per gallon shall be adjusted annually by the rate of  
64 change in the Consumer Price Index as reported by the Bureau of  
65 Labor Statistics of the United States Department of Labor.

66 (e) In making findings under subsections (b) and (c) of this section,  
67 the board shall specifically account for any payments received by dairy  
68 farmers under the federal Milk Income Loss Contract (MILC) Program,  
69 or other similar, direct federal pricing subsidy payments.

70 Sec. 3. (NEW) (*Effective July 1, 2005*) (a) In defining and establishing  
71 minimum pricing that is lawful, reasonable and just, the Milk  
72 Regulation Board shall ensure that such pricing does not unduly  
73 discriminate in favor of the state's dairy industry or unduly burden  
74 interstate commerce.

75 (b) The regulation of the board adopted under section 2 of this act  
76 shall, at a minimum, account for the following:

77 (1) In establishing the obligation of milk plants to make payment of  
78 a regulated minimum price, no distinction between or among such  
79 plants shall be made solely on the basis of their citizenship, state of

80 residency or other similar attribute related to territorial location. The  
81 board may make other distinctions as necessary to promote the  
82 regulation's purposes provided such distinctions are structured to  
83 preclude undue discrimination in favor of the state's dairy industry or  
84 undue burden on interstate commerce;

85 (2) A means for the collection from milk dealers of the proceeds of  
86 the minimum prices, the deposit of such proceeds in the account  
87 established under section 7 of this act and the disbursement of funds in  
88 such account to milk producers;

89 (3) For purposes of pooling and equalization, the value of milk used  
90 in other use classifications shall be calculated at the appropriate class  
91 price established pursuant to the applicable federal order or state dairy  
92 regulation. The value of unregulated milk shall be calculated in  
93 relation to the nearest prevailing class price in accordance with and  
94 subject to such adjustments as the board may prescribe in the  
95 regulation;

96 (4) For purposes of producer payments, including pooling and  
97 equalization procedures, no distinction shall be made among  
98 producers, or between or among milk plants or handlers responsible  
99 for making producer payments, solely on the basis of citizenship, state  
100 of residency or other similar attribute related to territorial location. The  
101 board may make other distinctions as necessary to promote the  
102 regulation's purposes provided such distinctions are structured to  
103 preclude undue discrimination in favor of the state's dairy industry or  
104 undue burden on interstate commerce;

105 (5) Assurance shall be made that producer payments do not create  
106 an undue incentive for the generation of additional supplies of milk;

107 (6) Exemption shall be provided from any payment obligation for  
108 producer-handlers marketing less than one million three hundred  
109 thousand pounds of milk per month;

110 (7) Reimbursement shall be provided to participants of the Women,  
111 Infants and Children Special Supplemental Food Program of the  
112 United States Child Nutrition Act of 1966. The board shall also  
113 consider whether the public interest will be further served by  
114 exemption of federal school food service programs; and

115 (8) Offset for the receipt of any payments received under the federal  
116 Milk Income Loss Contract (MILC) Program or other similar, direct  
117 federal pricing subsidy payments.

118 (c) The regulation of the board adopted under section 2 of this act  
119 may contain any of the following:

120 (1) Provisions classifying milk in accordance with the form in which  
121 or purpose for which it is used, or creating a flat pricing program;

122 (2) Provisions for location adjustments, zone differentials and  
123 qualification, and for competitive credits for regulated milk plants  
124 with sales beyond the state's boundaries;

125 (3) Provisions for the payment to all producers and associations of  
126 producers delivering milk to all handlers of uniform prices for all milk  
127 so delivered, irrespective of the uses made of such milk by the  
128 individual handler to whom it is delivered, or for the payment to  
129 producers delivering milk to the same handler of uniform prices for all  
130 milk delivered by such producers; and

131 (4) Other provisions as the board may find are necessary or  
132 appropriate to effectuate the purposes of such regulation.

133 Sec. 4. (NEW) (*Effective July 1, 2005*) In adopting a minimum milk  
134 price regulation or amendment thereto under section 2 of this act, the  
135 Milk Regulation Board may initiate the regulation-making process on  
136 its own initiative or upon the petition, pursuant to section 4-174 of the  
137 general statutes, of any person including, but not limited to, individual  
138 milk producers, any organization of milk producers or handlers,  
139 general farm organizations, consumer or public interest groups and

140 local, state or federal officials. Notwithstanding the provisions of  
141 subdivision (7) of subsection (a) of section 4-168 of the general statutes,  
142 the board shall hold a public hearing on the proposed regulation,  
143 notice of which shall be given in accordance with said section 4-168.

144 Sec. 5. (NEW) (*Effective July 1, 2005*) (a) The Milk Regulation Board  
145 shall have the power to subpoena and examine under oath any person  
146 subject to the board's jurisdiction, and their officers or other agents,  
147 together with their records, books and accounts. Such authority shall  
148 extend to the Wholesale Milk Price Regulatory subcommittee  
149 established under subsection (c) of section 22-131 of the general  
150 statutes, as amended by this act, and the subcommittee's duly  
151 authorized employees.

152 (b) The board shall have the power to inquire into the management  
153 of the business of any person subject to the board's jurisdiction, and to  
154 obtain from such person all necessary information. Such person shall  
155 keep and provide to the board any pertinent business books and  
156 records as defined in, and in the manner prescribed by, regulations  
157 adopted by the board, in accordance with the provisions of chapter 54  
158 of the general statutes. The board and its properly designated  
159 employees or agents shall have full access during normal business  
160 hours to the premises and records of all regulated persons.

161 (c) Information furnished to or acquired by the board's officers,  
162 employees or agents pursuant to this section shall constitute  
163 proprietary information and not be subject to public disclosure under  
164 the Freedom of Information Act, as defined in section 1-200 of the  
165 general statutes, except to the extent the board deems necessary in any  
166 administrative or judicial proceeding involving the administration or  
167 enforcement of its regulations. The board shall adopt regulations, in  
168 accordance with chapter 54 of the general statutes, to further define the  
169 confidentiality of information pursuant to this section.

170 Sec. 6. (NEW) (*Effective July 1, 2005*) (a) Upon the adoption of a  
171 minimum price regulation under section 2 of this act, the Milk

172 Regulation Board, through the Commissioner of Agriculture, shall  
173 enter into a memorandum of understanding with agencies in other  
174 states in the region that have established minimum milk pricing  
175 regulations similar in substance to such regulation. The memorandum  
176 of understanding shall provide for a common program of uniform  
177 administration of such price regulations including provisions relating  
178 to: (1) Milk plant payment obligations, (2) producer payments,  
179 including pooling and equalization provisions, (3) exemptions for the  
180 Women, Infants and Children Special Supplemental Food Program of  
181 the United States Child Nutrition Act of 1966 and federal school food  
182 service programs, (4) the producer handler exemption, and (5) surplus  
183 production under subdivision (5) of subsection (b) of section 3 of this  
184 act.

185 (b) The provisions of the common program of uniform  
186 administration established under subsection (a) of this section shall be  
187 expressly approved by the Wholesale Milk Price Regulatory  
188 subcommittee established under subsection (c) of section 22-131 of the  
189 general statutes, as amended by this act, and the minimum price  
190 regulation adopted under section 2 of this act shall be amended  
191 accordingly to incorporate such provisions. The board shall adopt such  
192 amended regulation in accordance with chapter 54 of the general  
193 statutes. Notwithstanding the provisions of subdivision (7) of  
194 subsection (a) of section 4-168 of the general statutes, the board shall  
195 hold a public hearing on the proposed regulation, notice of which shall  
196 be given in accordance with said section 4-168.

197 (c) The memorandum of understanding shall allow for the  
198 incorporation of any changes made to the common program during  
199 the regulation-making procedure conducted under subsection (b) of  
200 this section. As necessary, the revised common program may be  
201 resubmitted to the subcommittee for final approval in accordance with  
202 the requirements of subsection (b) of this section.

203 (d) The amended minimum price regulation adopted under

204 subsection (b) of this section, including the provisions of the common  
205 program of uniform administration, and the implementation of such  
206 amended regulation shall be subject to the approval of producers. For  
207 the purpose of ascertaining whether such amended regulation,  
208 including the provisions of the common program, is approved by  
209 producers, the memorandum of understanding shall provide for  
210 conducting a referendum among producers as provided in subsection  
211 (e) of this section.

212 (e) (1) The referendum shall include all producers engaged in the  
213 production of milk subject to the amended regulation, and the  
214 common program, during a representative period as determined  
215 under the common program. The referendum shall be held in a timely  
216 manner after the adoption of the amended regulation by the board  
217 under subsection (b) of this section. The terms and conditions of the  
218 amended regulation, including all provisions of the common program,  
219 shall be described in the ballot used in conducting the referendum,  
220 except that the nature, content or extent of such description shall not  
221 be a basis for attacking the legality of the regulation or any action  
222 relating thereto.

223 (2) The regulation shall be deemed approved by producers upon the  
224 determination that at least two-thirds of the eligible producers have  
225 voted in the affirmative.

226 (3) For purposes of any referendum, the approval or disapproval by  
227 any cooperative association of producers, qualified under the  
228 provisions of the Act of Congress of February 18, 1922, as amended,  
229 known as the Capper-Volstead Act, bona fide engaged in marketing  
230 milk, or in rendering services for or advancing the interests of  
231 producers of such commodity, shall be considered as the approval or  
232 disapproval of the producers who are members or shareholders in, or  
233 under contract with such cooperative association of producers, except  
234 as provided in subparagraph (A) of subdivision (4) of this subsection  
235 and subject to the further provisions of subparagraphs (B) and (C) of



236 subdivision (4) of this subsection.

237 (4) (A) No cooperative which has been formed to act as a common  
238 marketing agency for both cooperatives and individual producers shall  
239 be qualified to block vote for either.

240 (B) Any cooperative which is qualified to block vote shall, before  
241 submitting its approval or disapproval in any referendum, give prior  
242 written notice to each of its members as to whether and how it intends  
243 to cast its vote. The notice shall be given in a timely manner as  
244 established, and in the form prescribed, by the common program.

245 (C) The common program shall provide for individual notice to all  
246 eligible producers of the provisions of the minimum price regulation  
247 or amendment thereto under consideration, and that each producer  
248 may register his or her approval or disapproval, either directly or  
249 through his or her cooperative. Such notice shall include the means for  
250 any producer to obtain a ballot in order to register approval or  
251 disapproval of the amended regulation. The common program shall  
252 further provide for the removal of any such producer who casts his or  
253 her ballot from the list certified by the applicable cooperative with its  
254 corporate vote.

255 Sec. 7. (NEW) (*Effective July 1, 2005*) There is established the  
256 minimum milk price regulation account, which shall be a separate,  
257 nonlapsing fund within the General Fund. All funds received by the  
258 Milk Regulation Board as a result of the regulation of minimum milk  
259 prices by the board shall be deposited in the account. Funds in the  
260 account shall be used by the board for disbursements to milk  
261 producers in accordance with this act. The costs incurred by the  
262 board's Wholesale Milk Price Regulatory subcommittee in the  
263 discharge of its duties pursuant to this act shall be paid from the  
264 account. The regulation adopted by the board under section 2 of this  
265 act shall establish the amount that may be expended by the  
266 subcommittee for administrative costs.

267       Sec. 8. (NEW) (*Effective July 1, 2005*) Any person aggrieved by any  
 268       action of the board under sections 2 to 6, inclusive, of this act may  
 269       appeal therefrom to the Superior Court in accordance with the  
 270       provisions of section 4-183 of the general statutes.

271       Sec. 9. (NEW) (*Effective July 1, 2005*) Any person who violates any  
 272       provision of sections 2 to 6, inclusive, of this act or of any regulation  
 273       adopted by the board thereunder, or any order of the board or  
 274       Commissioner of Agriculture under said sections or regulation, shall  
 275       be assessed a civil penalty in accordance with the provisions of section  
 276       22-7 of the general statutes, and the commissioner may request the  
 277       Attorney General to institute a civil action in the Superior Court for  
 278       injunctive relief to restrain any further violation of sections 2 to 6,  
 279       inclusive, of this act, or of any regulation adopted by the board  
 280       thereunder, and to secure compliance with said sections or regulation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2005</i>	22-131
Sec. 2	<i>July 1, 2005</i>	New section
Sec. 3	<i>July 1, 2005</i>	New section
Sec. 4	<i>July 1, 2005</i>	New section
Sec. 5	<i>July 1, 2005</i>	New section
Sec. 6	<i>July 1, 2005</i>	New section
Sec. 7	<i>July 1, 2005</i>	New section
Sec. 8	<i>July 1, 2005</i>	New section
Sec. 9	<i>July 1, 2005</i>	New section

***Statement of Purpose:***

To authorize the adoption of regulations establishing a minimum price to be paid to producers of milk and to authorize a common program of uniform administration of milk prices among states in the region.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*